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February 16, 2017

Ms. Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

***Re: Mobility Fund Phase II, WT Docket 10-208; Connect America Fund,  
WC Docket 10-90***

Dear Ms. Dortch,

In separate meetings on February 14 and February 15, Joan Marsh and the undersigned of AT&T Services, Inc., met with Claude Aiken of Commissioner Clyburn's office and Amy Bender of Commissioner O'Rielly's office. Stacy Fuller, also of AT&T, joined the meeting with Mr. Aiken. During the meetings we discussed both the Mobility Fund Phase II draft Order and the Order establishing the weightings for the CAF II Auction.

AT&T urged the Commission to make the needs of consumers in rural areas the ultimate litmus test for the policy decisions it has before it. The design and details of these competitive processes should not be determined by what is "fair" to different providers or technologies. Carriers will compete against each other in the auction but the only winners that matter are rural consumers. Mobility Fund II and the CAF II Auction could be the last best chance to get modern wireless and broadband services to the parts of the country that still lack these now fundamental services. Reaching as many of these rural consumers as possible with a reasonable level of service must be the top priority.

For Mobility Fund II to achieve this goal, the Commission must recognize that after years of intense private sector investment in LTE deployment, areas that still lack LTE by definition pose unusual and significant challenges. Difficult terrain, sparse population, and inadequate backhaul combine to create a barrier that no provider has been able to overcome. Approximately 40% of the potentially eligible areas lack any wireless service of any kind; no towers, no backhaul, nothing. MF II support can tip the business case in favor of deployment, but only if the requirements that come with the funding are reasonable and clear before the auction. The proposed 10/1 "median data speed of the network" fails this test on both counts. Not only is the speed aggressively high<sup>1</sup>, but "median data speed of the network" is too vague and ill-suited to wireless networking to have clear meaning. Parties cannot effectively evaluate other

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<sup>1</sup> The analysis of estimated cost submitted by ATN, AT&T and Blue Wireless assumed a network capable of average outdoor download speeds of 5/1 and a tower upgrade vs. new ratio of 58% to 42%. Adopting a 10/1 speed requirement would likely increase the number of new towers that would be needed and thus increase the cost of deployment.

features of MF II much less consider participating without having a better understanding of this fundamental requirement. And it is not an issue that can be left to a procedures PN. While AT&T continues to believe that providing customers with an average outdoor download speed of 5/1 is a much better MFII goal, if there is to be a “10/1” requirement, we suggest it be more clearly defined in this Order as follows: Deploy an LTE network capable of meeting data speeds of at least 10/1 measured using industry standard methods between the hours of 6 am to midnight at a point that is within 30% of the cell radius, but not to exceed one mile, for enabled sectors. This definition provides the information potential bidders need to design their networks and assures the Commission that facilities deployed with MF II support are engineered to provide 10/1. If the Commission also envisions a broader service level test (similar to the Joint Proposal at E.3.c.) we suggest that no more than 90% of the “on the ground” speed test results should be required to meet a speed threshold of 3Mbps as measured between 6 a.m. and midnight.

Another area of concern is the proposed “overall” 90% of the eligible square miles in a state deployment requirement. While it appears to be consistent with the goal of reaching as many consumers as possible, a 90% deployment requirement does not take into account the unique challenges of the eligible areas. It also assumes that participants will always bid on and win multiple census tracts in a state so that deployment by tract can be managed appropriately to reach the 90% overall goal while taking advantage of the lower 75% option in other tracts. This proposal would appear to complicate the bidding process and potentially favor larger bidders. More importantly, however, it could dissuade providers from bidding on census tracts with more challenging deployment profiles or require providers to deploy to large empty areas just for the sake of meeting an arbitrary deployment figure. AT&T believes that an 85% overall requirement would provide a better balance. At minimum, however, AT&T suggests that the Commission adopt a streamlined waiver process from the 90% requirement if a carrier is faced with insurmountable deployment obstacles or situations where spending USF resources may not be in the public interest. These circumstances will undoubtedly arise given the unique nature of the MF II eligible areas and allowing for some flexibility will encourage more providers to step up to the challenge of serving them.

The CAF II Auction Weightings Order presents the clearest test of the Commission’s commitment to rural consumers and the principle of Universal Service in general. USTelecom has put an analysis on the record that illustrates the impact on consumers of favoring an expensive technology over a more cost effective one.<sup>2</sup> There are at least 1.5 million consumers in rural America who still do not have adequate broadband. The Commission’s goal should be to reach as many of these consumers as possible with a reasonable level of broadband. But setting weights that favor 1 Gig deployments will leave more than half of these consumers untouched by CAF II support and with little hope of ever being served. This cannot be the right result, especially since 1 Gig service does not even meet the definition of a Universal

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<sup>2</sup> Letter from Jonathan Banks, Senior Vice President, Law & Policy, United States Telecom Association, to Ms. Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 (Feb. 9, 2017).

Service. A number of parties are arguing that the weights must be set to ensure that all providers have a fair opportunity to win.<sup>3</sup> AT&T believes that the weights should be set so that *rural consumers* win, which means staying true to Universal Service principles and adopting weights such as USTelecom<sup>4</sup> and many other have proposed.<sup>5</sup> A weight range such as USTelecom's 0/5/15/20 acknowledges that speed has value without losing sight of the importance of coverage and cost effectiveness.

In both proceedings before it, the Commission should be considering how it's rules encourage or discourage providers from participating in the MF II and CAF II auctions, as well as fine tuning obligations to ensure that any compliance costs are truly necessary. The proposal to include Mobility Fund I collocation and roaming requirements in MF II is an example of unnecessary obligations that would nonetheless impose costs on providers. The wireless marketplace is vastly different than it was in 2011 and there is no need to impose special requirements where industry-wide rules and financial incentives are more than sufficient.

Likewise, the Commission should avoid establishing any service obligation that "evolves" over time, especially obligations that have a direct impact on the design and deployment of network facilities but that are unknowable at the time of the commitment, auction, or network build.

The Commission has repeatedly acknowledged this concern. For example, last year in its *Rate-of-Return Reform Order*, the Commission "recognize[d] that it is difficult to plan network deployment not knowing the performance obligations that might apply by the end of the 10-year term"<sup>6</sup> and in 2014 the Commission correctly concluded that "[t]o plan a network, recipients of support need to know ahead of time what will be expected of them."<sup>7</sup> But, just this week the Wireline Competition Bureau issued a Public Notice changing the usage allowance that applies to carriers that took model-based CAF II support, rate-of-return carriers and winners of the CAF II auction in the

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<sup>3</sup> *Ex Parte* Letter from Rebekah P. Goodheart, Counsel to the Association of Missouri Electric Cooperatives, Midwest Energy Cooperative, HomeWorks Tri-County Electric Cooperative, Alger Delta Cooperative Electric Association, and Great Lakes Energy, to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 (Feb. 14, 2017) (expressing concern that certain weight proposals would prevent "bidders in higher tiers to participate and win."); *Ex Parte* Letter from Thomas Cohen, Counsel to American Cable Association, to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 (Feb. 6, 2017) (stating that its weighting methodology would permit bidders, regardless of technology, "to have a similar opportunity to prevail.").

<sup>4</sup> Reply Comments of United States Telecom Association, WC Docket No. 10-90, 14-58 & 14-259, p. 2 (Aug. 5, 2016).

<sup>5</sup> *Ex Parte* Letter from Jennifer A. Manner, Senior Vice President, Regulatory Affairs, Hughes Network Systems, to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 (Feb. 15, 2017); Comments of the Wireless Internet Service Providers Association, WC Docket No. 10-90, 14-58 & 14-259, p. 2 (July 21, 2016); Comments of ITTA, WC Docket No. 10-90, 14-58 & 14-259, pp. 9 – 10 (July 21, 2016); and Comments of Verizon, WC Docket No. 10-90, 14-58 & 14-259, p. 4 (July 21, 2016).

<sup>6</sup> *Connect America Fund et al.*, Report and Order et al., 31 FCC Rcd 3087, ¶ 24 (2016) (*Rate-of-Return Reform Order*).

<sup>7</sup> *Connect America Fund et al.*, Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking, 29 FCC Rcd 7051, ¶ 157 (2014).

so-called Baseline Performance Tier from 150 GB/month to 160 GB/month.<sup>8</sup> Even worse, this increase is *retroactive* to January 1, 2017. The inherent unpredictability of such a changing requirement is disruptive to providers attempting to design a network that complies with the Commission's requirements. Moreover, the methodology used to derive this new figure is completely opaque. It is difficult to imagine how potential bidders will determine their support needs for the Baseline Performance Tier category when a fundamental obligation is unknowable. Not only should the Commission avoid establishing new "evolving" obligations, it should take this opportunity to freeze the minimum usage allowance for CAF II model-based and Baseline Performance Tier recipients, and rate-of-return carriers at the new 160 GB level.

Sincerely,

//Mary L. Henze//

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cc: N. Degani  
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<sup>8</sup> Wireline Competition Bureau Announces Results of 2017 Urban Rate Survey for Fixed Voice and Broadband Services, Posting of Survey Data and Explanatory Notes, and Required Minimum Usage Allowance for ETCs Subject to Broadband Public Interest Obligations, Public Notice, DA 17-167 (rel. Feb. 14, 2017).

